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CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES

BY _____

*Attorneys for Plaintiff
Network Automation, Inc.*

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CBM (CWx)

NETWORK AUTOMATION, INC., a
California Corporation,

Plaintiff,

vs.

ADVANCED SYSTEMS CONCEPTS,
INC., a New Jersey Corporation; and
DOES 1-10, inclusive,

Defendant.

CASE NO. 0484

COMPLAINT FOR DECLARATORY
JUDGMENT OF NON-
INFRINGEMENT

Plaintiff Network Automation, Inc. ("Plaintiff"), for its claims against Defendant
Advanced Systems Concepts, Inc. ("Defendant"), respectfully alleges as follows:

JURISDICTION AND VENUE

1. Jurisdiction is proper in this Court because this litigation arises under
federal law, namely 17 U.S.C. § 1051, et seq. (Lanham Act). The Court has subject
matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question), 28
U.S.C. § 1338(a) (trademarks), and 28 U.S.C. § 2201 (Declaratory Judgment Act).

2. This Court has personal jurisdiction over Defendant because Defendant
conducts business within Central District of California.

3. Venue is proper in this district pursuant to 28 U.S.C. § 1391 because the
claims asserted arise in this district.

THE PARTIES

4. Plaintiff Network Automation, Inc. ("Network Automation") is a corporation organized and existing under the laws of the State of California, with a principal place of business in Los Angeles, California.

5. Upon information and belief, Defendant Advanced Systems Concepts, Inc. ("ASCI") is a corporation organized and existing under the laws of the state of New Jersey with a principal place of business in Morristown, New Jersey.

6. Plaintiff is unaware of the names and true capacities of Defendant, whether individual, corporate and/or partnership entities, named herein as DOES 1 through 10, inclusive, and therefore sues them by their fictitious names. Plaintiff will seek leave to amend this complaint when their true names and capacities are ascertained. Plaintiff is informed and believes, and based thereon allege, that said Defendant and DOES 1 through 10, inclusive, are in some manner responsible for the wrongs alleged herein and, that at all times referenced, each was the agent and servant of the other Defendant and was acting within the course and scope of said agency and employment.

7. Plaintiff is informed and believes, and based thereon allege, that at all relevant times herein, Defendant and DOES 1 through 10, inclusive, knew or reasonably should have known of the acts and behavior alleged herein and the damages caused thereby, and by their inaction ratified and encouraged such acts and behavior. Plaintiff further alleges that Defendant and DOES 1 through 10, inclusive, have a non-delegable duty to prevent or cause such acts and the behavior described herein, which duty Defendant and DOES 1 through 10, inclusive, failed and/or refused to perform.

FIRST CLAIM FOR RELIEF

(Declaratory Relief – 28 U.S.C. § 2201(a))

8. Plaintiff incorporates herein by reference the averments of the preceding paragraphs as though fully set forth herein.

1 9. Since 2004, Network Automation has been engaged in the development
2 and sale of software that enables users to free themselves from repetitive tasks and
3 automate any task ranging from small jobs on workstations to network-wide intelligent
4 automation routines.

5 10. Network Automation was founded by Dustin Snell, who since Network
6 Automation's birth, has spent years building the company to its current position. Mr.
7 Snell previously worked as an advisor to the product development team at Elan
8 Software (now Frontrange Solutions) until he launched his first company in 1995 with
9 a new focus of creating the best-of-breed automation software for Windows systems.
10 The new company, which was called Unisyn Software and was accessed via the
11 Internet at www.networkautomation.com, quickly became the leader in the desktop
12 automation market. In July of 2004, Mr. Snell recast Unisyn as Network Automation
13 with the vision of automating corporate networks and business processes.

14 11. Network Automation has distinguished itself as a leader in the market for
15 automation software geared towards simplifying business computing and networking.

16 12. The Network Automation product line has been praised and recognized in
17 articles appearing in publications that target IT professionals, such as Network World,
18 Redmond Magazine, eWeek, Network Computing, and Windows IT Pro Magazine.

19 13. Upon information and belief, Plaintiff hereon alleges that Defendant
20 ASCI is a software engineering company specializing in the development of System
21 Software Solutions which enhance Microsoft Windows® including Windows 7, Linux,
22 UNIX and OpenVMS systems.

23 14. Upon information and belief, ASCI is the owner of the federally
24 registered trademark ACTIVEBATCH, U.S. Registration No. 2,446,087.

25 15. On or about November 16, 2009, ASCI's Vice President of Sales and
26 Marketing sent a letter to Network Automation alleging improper usage of ASCI's
27 ACTIVEBATCH mark in relationship to internet search engines.
28

1 16. Specifically, ASCI believes that Network Automation is infringing upon
2 the ACTIVEBATCH mark by using it or variations of it with respect to the Google
3 AdWords® Program to improperly direct customers to Network Automation's website.

4 17. An actual, present, and justiciable controversy exists between Network
5 Automation and ASCI regarding Network Automation's alleged usage of ASCI's
6 ACTIVEBATCH mark with regards to the Google AdWords® Program.

7 18. The actual controversy that exists between Network Automation and
8 ASCI is within this Court's jurisdiction such that this Court may declare the rights and
9 other legal relations of the parties pursuant to 28 U.S.C. § 2201(a).

10 19. Pursuant to 28 U.S.C. § 2201, Plaintiff requests that this Court enter a
11 declaratory judgment of non-infringement of ASCI's trademarks by Network
12 Automation.

13 **PRAYER FOR RELIEF**

14 WHEREFORE, Plaintiff respectfully prays that this Court enter judgment in
15 its favor and against Defendants as follows:

16 A. This Court exercises jurisdiction over this matter;

17 B. Network Automation has not infringed upon the ACTIVEBATCH mark
18 or any other registered mark owned by ASCI;

19 C. Network Automation is not in violation of any provision of the Lanham
20 Act;

21 D. ASCI is not entitled to recover any monetary damages whatsoever from
22 Network Automation.

23 E. Network Automation be awarded costs incurred in this action.

24 ///

25 ///

26 ///

27 ///

28 ///

1 F. Network Automation be granted such other further relief as may be just
2 and proper.

3
4 Dated: January 22, 2010

BLAKELY LAW GROUP

5
6 By:


Brent H. Blakely
Cindy Chan
Attorneys for Plaintiff
Network Automation, Inc.

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

This case has been assigned to District Judge Consuelo B. Marshall and the assigned discovery Magistrate Judge is Carla Woehrle.

The case number on all documents filed with the Court should read as follows:

CV10- 484 CBM (CWx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

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NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

☒ **Western Division**
312 N. Spring St., Rm. G-8
Los Angeles, CA 90012

☐ **Southern Division**
411 West Fourth St., Rm. 1-053
Santa Ana, CA 92701-4516

☐ **Eastern Division**
3470 Twelfth St., Rm. 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

Brent H. Blakely (SBN 157292)
 Cindy Chan (SBN 247495)
 BLAKELY LAW GROUP
 915 North Citrus Avenue
 Hollywood, California 90038
 Attorneys for Plaintiff Network Automation, Inc.

UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA

NETWORK AUTOMATION, INC., a California
 Corporation,

PLAINTIFF(S)

v.

ADVANCED SYSTEMS CONCEPTS, INC., a New
 Jersey Corporation; and DOES 1-10, inclusive,

DEFENDANT(S).

CASE NUMBER

CV10 0484 CBM (CWx)

SUMMONS

TO: DEFENDANT(S): Advanced Systems Concepts, Inc.

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached ☒ complaint ☐ amended complaint ☐ counterclaim ☐ cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, Brent H. Blakely and/or Cindy Chan, whose address is 915 North Citrus Avenue, Hollywood, California 90038. If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Clerk, U.S. District Court

JAN 22 2010

Dated: _____

By: _____

CHRISTOPHER POWERS

Deputy Clerk

(Seal of the Court)

[Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States. Allowed 60 days by Rule 12(a)(3)].

(a) PLAINTIFFS (Check box if you are representing yourself <input type="checkbox"/> Network Automation, Inc.	DEFENDANTS Advanced Systems Concepts, Inc.
(b) Attorneys (Firm Name, Address and Telephone Number, If you are representing yourself, provide same.) BLAKELY LAW GROUP Telephone: (323) 464-7400 915 North Citrus Avenue Hollywood, California 90038	Attorneys (If Known)

BASIS OF JURISDICTION (Place an X in one box only.)		III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant.)					
1 U.S. Government Plaintiff	<input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)	Citizen of This State	PTF <input type="checkbox"/> 1	DEF <input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	PTF <input type="checkbox"/> 4	DEF <input type="checkbox"/> 4
2 U.S. Government Defendant	<input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State:	<input type="checkbox"/> 5	<input type="checkbox"/> 5
		Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. ORIGIN (Place an X in one box only.)

<input type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from another district (specify):	<input type="checkbox"/> 6 Multi-District Litigation	<input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judge
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REQUESTED IN COMPLAINT: JURY DEMAND: ☐ Yes ☒ No (Check "Yes" only if demanded in complaint.)

CLASS ACTION under F.R.C.P. 23: ☐ Yes ☒ No

MONEY DEMANDED IN COMPLAINT: \$

I. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

Declaratory Judgment of Non-Infringement

II. NATURE OF SUIT (Place an X in one box only.)

OTHER STATUTES	CONTRACT	TORTS	TORTS	PRISONER	LABOR
400 State Reapportionment	<input type="checkbox"/> 110 Insurance	PERSONAL INJURY	PERSONAL PROPERTY	PETITIONS	<input type="checkbox"/> 710 Fair Labor Standards Act
410 Antitrust	<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 720 Labor/Mgmt. Relations
430 Banks and Banking	<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 530 Habeas Corpus General	<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act
450 Commerce/ICC Rates/etc.	<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 740 Railway Labor Act
460 Deportation	<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Fed. Employers' Liability	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 540 Mandamus/Other	<input type="checkbox"/> 790 Other Labor Litigation
470 Racketeer Influenced and Corrupt Organizations	<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	BANKRUPTCY	<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act
480 Consumer Credit	<input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 555 Prison Condition	PROPERTY RIGHTS
490 Cable/Sat TV	<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 423 Withdrawal 28 USC 157	FORFEITURE / PENALTY	<input type="checkbox"/> 820 Copyrights
810 Selective Service	<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	CIVIL RIGHTS	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 830 Patent
850 Securities/Commodities/Exchange	<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 620 Other Food & Drug	<input checked="" type="checkbox"/> 840 Trademark
875 Customer Challenge 12 USC 3410	<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 362 Personal Injury-Med Malpractice	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	SOCIAL SECURITY
890 Other Statutory Actions	<input type="checkbox"/> 196 Franchise	<input type="checkbox"/> 365 Personal Injury-Product Liability	<input type="checkbox"/> 443 Housing/Accommodations Welfare	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 861 HIA (13951)
891 Agricultural Act	REAL PROPERTY	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 445 American with Disabilities - Employment	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 862 Black Lung (923)
892 Economic Stabilization Act	<input type="checkbox"/> 210 Land Condemnation	IMMIGRATION	<input type="checkbox"/> 446 American with Disabilities - Other	<input type="checkbox"/> 650 Airline Regs	<input type="checkbox"/> 863 DIWC/DIWW (405(g))
893 Environmental Matters	<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 462 Naturalization Application	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 660 Occupational Safety /Health	<input type="checkbox"/> 864 SSID Title XVI
894 Energy Allocation Act	<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 463 Habeas Corpus-Alien Detainee		<input type="checkbox"/> 690 Other	<input type="checkbox"/> 865 RSI (405(g))
895 Freedom of Info. Act	<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 465 Other Immigration Actions			FEDERAL TAX SUITS
8900 Appeal of Fee Determination Under Equal Access to Justice	<input type="checkbox"/> 245 Tort Product Liability				<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)
8950 Constitutionality of State Statutes	<input type="checkbox"/> 290 All Other Real Property				<input type="checkbox"/> 871 IRS-Third Party 26 USC 7609

OR OFFICE USE ONLY: Case Number:

CV10 0484

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEETVIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? ☒ No ☐ Yes

If yes, list case number(s): _____

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? ☒ No ☐ Yes

If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:

(Check all boxes that apply)

- ☐ A. Arise from the same or closely related transactions, happenings, or events; or
- ☐ B. Call for determination of the same or substantially related or similar questions of law and fact; or
- ☐ C. For other reasons would entail substantial duplication of labor if heard by different judges; or
- ☐ D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

(a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named plaintiff resides.

☐ Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Network Automation, Inc. - Los Angeles	

(b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named defendant resides.

☐ Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
	Advanced Systems Concepts, Inc. - New Jersey

(c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH claim arose.

Note: In land condemnation cases, use the location of the tract of land involved.

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles	

* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

Note: In land condemnation cases, use the location of the tract of land involved

X. SIGNATURE OF ATTORNEY (OR PRO PER):

Date

1/22/2010

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))